

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208525

DATE: October 1, 1982

MATTER OF: Interior Steel Equipment Co.

DIGEST:

Protest filed with GAO more than 10 working days after protester learns of initial adverse agency action (refusal to terminate award to another) on protest to agency is dismissed as untimely.

Interior Steel Equipment Co. (ISE), a Federal Supply Schedule contractor, protests the Department of the Interior, Bureau of Indian Affairs (Interior), award of a contract to Sacred Mountain Supply Co. (SMS) under the Buy Indian Act, 25 U.S.C. § 47 (1976).

The record shows that ISE first learned of the award to SMS in the June 23, 1982, issue of the Commerce Business Daily. Interior advises that ISE protested the award to SMS in early July 1982, in a telephone conversation with the contracting officer. ISE was told at that time that Interior would not terminate its contract with SMS because the Buy Indian Act took precedence over the mandatory purchasing requirements of the Federal Supply Schedule. ISE filed its protest with our Office on August 5, 1982.

Under our Bid Protest Procedures, a protester has 10 working days after initial adverse agency action on its protest filed with the contracting agency to file a protest with our Office. 4 C.F.R. § 21.2(a) (1982). Adverse agency action is defined as any action or inaction which is prejudicial to the position taken in a protest filed with an agency. 4 C.F.R. § 21.0(b) (1982). Interior's early July advice to ISE that it had already made an award which it would not terminate because the Buy Indian Act took precedence over the Federal Supply Schedule was clearly adverse to ISE's position. See Cane Technical Training & Inspection, B-207347, September 8, 1982, 82-2 CPD _____. We did not receive ISE's subsequent protest until August 5, 1982, well beyond the 10-day time limit of 4 C.F.R. § 21.2(a). Therefore, ISE's protest is untimely and will not be considered.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel